



## THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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# Navajo Nation President Joe Shirley, Jr., issues statement to inform voters of court decision to invalidate referendum

*Council failed to follow law, respect Ké, Diné bi beenahaz'áanii*

**WINDOW ROCK, Ariz.** – In compliance with the wishes of Window Rock District Court Judge Allen Sloan, Navajo Nation President Joe Shirley, Jr., on Friday issued a statement to inform as many Navajo voters as possible of the Court's order to invalidate the election of judges referendum measure on the Nov. 2 election ballot.

Board of Election Supervisors because it was not sent to the President by the Navajo Nation Council for review as required by law," President Shirley said. "Regardless of whether voters vote yes, no, or don't vote at all on the measure, no votes will be counted because the measure has been ruled invalid."

On Thursday, Judge Sloan declared the Judicial Elections Referendum ballot measure invalid.

In his final order on Friday, Judge Sloan granted a permanent injunction and declaratory judgment against the Navajo Board of Election Supervisors, citing the Navajo Nation Council's failure to transmit the legislation to the President's office as required by Title 2 of the Navajo Nation Code.

*"The Supreme Court has taken great pains to stress the responsibility of the Navajo naat'áanii to work together and consult on government issues. This cooperation is necessary for the survival of the Navajo government."*

– Window Rock District Court Judge Allen Sloan

"Navajo Nation Council Resolution CJY-32-10 must have been presented to the President of the Navajo Nation for his exercise of Presidential review powers pursuant to 2 N.N.C. 165 (B)," Judge Sloan wrote in his Oct. 29 order.

He said voters should continue to vote for President and Vice President, Council delegate, Board of Election Supervisors, and other offices on the ballot, as well as for offices in the state and national election.

"When the (Council) did not transmit the Resolution to the President's office in accordance therewith, the Resolution was without force and effect and never became a valid Council enactment under law."

Not voting for the referendum measure will not spoil a voter's ballot, according to Kimmeth Yazzie of the Navajo Election Administration.

In his statement to the public, which was presented Friday and throughout the weekend on KTNN radio, President Shirley said the ruling means Navajo voters *should not* vote on the measure because the votes will not be counted.

The Court found that the Council "has an affirmative obligation to inform the President of whether his veto powers will play a role" in enacting legislation.

"The Judge ruled that the referendum measure was improperly placed on the election ballot by the Navajo

"This is essential under *Diné bi beenahaz'áanii*, *Ké*, and Supreme Court precedent," Judge Sloan held. "Simply deciding that the President's veto powers are not necessitated is insufficient as this case very well illustrates. Had the Council taken the step of initially

consulting with the President as whether his veto powers play a role in this particular referendum referral process, we would not be here.”

Citing *Office of Navajo Labor Relations ex rel. Jones v. Central Consolidated School District*, the Court noted “the fundamental opportunity to be heard stems from the principle that ‘every word is powerful, sacred and never frivolous.’”

“Under these principles, the President should have been given the opportunity to be heard through presentation of the resolution for his Executive veto review,” Judge Sloan held.

The Court also found that the separation of powers concept warranted discussion in this case.

“Although the Branches are separate, they have their functions, and the Branches are expected to work together cooperatively and cohesively,” the Judge held. “The Supreme Court has taken great pains to stress the responsibility of the Navajo *naat’áanii* to work together and consult on government issues. This cooperation is necessary for the survival of the Navajo government.”

“Merely giving the President a copy of the resolution does not constitute cooperation,” he said.

On Thursday, Judge Sloan expressed his concern about the effect of invalidating a measure that some voters have already voted on. During the Oct. 8 hearing on a preliminary injunction, he said doing so discourages voters from voting in later elections.

However, in this case, he noted that by depriving the President of his right of review of the legislation, “that in effect deprived the voting public of the right to hear (the) President’s voice in the referendum referral process.”

Following the Oct. 8 hearing, Navajo Nation Council Speaker Lawrence T. Morgan’s office issued a press release to rush absentee voters to cast votes on the referendum before the legal process was completed, knowing of the possibility that the referendum measure could be removed from the ballot.

“Since President Shirley has publicized his intent to continue to block the Navajo people’s right to vote, it is suggested that persons wanting to cast absentee votes

do so before his next legal maneuver to deny them their right to vote,” the Speaker’s office said.

President Shirley addressed the Speaker’s misrepresentation of his intent, asking when he said he was against the People voting.

“For 19 months, we struggled to allow the People to vote on the initiative to reduce the Council and give the President line item veto authority,” the President said. “This was to bring accountability back to our government. All along the way, the Speaker’s office tried to prevent that election from happening.”

- On July 17, 2008, the Office of Legislative Counsel filed a motion with the Navajo Nation Supreme Court to stop the special election.

- On July 22, 2008, the Supreme Court denied the motion and issued an opinion that held it is the right of the People to change their government through the initiative process.

- On Nov. 7, 2008, the Navajo Election Administration ruled that both initiative petitions had insufficient signatures yet refused to allow the Initiative Petition Committee to examine which signatures were disqualified or why.

- On May 30, 2009, after a six-month delay, the Office of Hearings and Appeals ruled that the special election could go forward after former Chief Legislative Counsel Frank Seanez stipulated that the petitions contained a sufficient number of signatures based on NEA’s recount.

- On Dec. 23, 2009, eight days after the special election, the Intergovernmental Relations Committee approved \$150,000 from the Speaker’s budget to contest the results of the successful Dec. 15 special election to reduce the Council and give the President line item veto authority.

- On June 4, 2010, after nearly six months of delay, the Navajo Board of Election Supervisors certified the Dec. 15 results only after being ordered to by the Supreme Court on May 28.

“I have always supported the right of the People to vote but we must follow the law as we did with the initiative election,” President Shirley said. “In this case, the Council tried to bypass the law. That is not right. And so what I did was caution the Council to follow the law. These are sacred trusts the People placed upon us as leaders.”

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